

Issues 4 and 6

Would a rule with general requirements offering flexibility in approaches to compliance, or a rule that spells out very specific requirements be preferable? Would a combination of these two approaches be most effective?

How will employers know when they have complied with the rule?

Options for Discussion

This matrix provides options and information to facilitate a discussion of two questions: **1. Would a rule with general requirements offering flexibility in approaches to compliance, or a rule that spells out very specific requirements be preferable? Would a combination of these two approaches be most effective?** and **2. How will employers know when they have complied with the rule?** These were two of the key issues raised during the rule-development conferences L&I held in seven Washington cities last October and in comments the department received after the conferences.

The matrix describes five options:

- Option 1: Specification Requirements.
- Option 2: Performance Requirements
- Option 3: Best Practices
- Option 4: General Requirement
- Option 5: Combination of Options

Space is also provided at the end of the matrix to add other options.

Note: There is a range of “general” or “specific” characterizations available for any given requirement of a rule. Some may apply to only an action or method used to carry out the requirement (e.g., what evaluation tool must be used). Some general or specific options may apply to only the outcome or objective of the requirement (e.g., what lifts must be eliminated). The general or specific distinction for the action/method and outcome/objective of each option is listed in the following matrix.

Please read through the matrix carefully and come to the meeting with any additional strengths or limitations for each option, new options, or new combinations of options you would like to see considered.

As we note with each of these preliminary matrices, these questions and those already discussed are significantly interrelated. We will be coming back to these various options as we continue to work toward development of a proposal.

Issue 4 and Issue 6: Options for Discussion

- Would a rule with general requirements offering flexibility in approaches to compliance, or a rule that spells out very specific requirements be preferable? Would a combination of these two approaches be most effective?
- How will employers know when they have complied with the rule?

Option/Description Requirement	Strengths	Limitations	Example	How will employers know when they have complied with the rule?
<p>Option 1: Specification Requirement</p> <p>The requirement of a rule is spelled out in detail.</p> <p>Action/Method of Requirement: Specific</p> <p>Objective/Outcome of Requirement: Specific</p>	<p>Very clear for employers what they have to do under the rule. In situations where a compliance inspection occurs, documentation and decisions by inspectors would be clear-cut. Straightforward for employers who don't have resources to examine alternative ways to address the hazard.</p>	<p>Can be difficult to identify a specification that would be practical and appropriate for the range of employers and industries covered under the rule. Not flexible for employers who may have existing programs or resources that could adequately address the requirement in an alternate (preferred) way.</p>	<p>1. From the <u>OSHA 1995 Proposed Ergonomics Standard</u>: On any farm or in any agricultural establishment where workers are employed on any given day in hand-labor operations, the use of any knife, hoe, rake, fork or other tool with a handle less than 4 feet in length which results in a stooped position is prohibited for weeding, thinning, hot-capping, or other similar cultivation practices.</p>	<p>Where a specification requirement is contained in the rule, an employer would know they have complied with the rule when that specification is met. In the first example given, an employer would know they had complied with the requirement when tools used for agricultural hand labor operations have handles 4 feet or longer.</p>

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Option 1 continued			<p>2. From the <u>WISHA safety and health rules, Bloodborne Pathogens Standard (WAC 296-62-08001)</u>: The employer must ensure that hepatitis B vaccination shall be made available after the employee has received the training required and within ten working days of initial assignment to all employees who have occupational exposure unless the employee has previously received the complete hepatitis B vaccination series, antibody test has revealed that the employee is immune, or the vaccine is contraindicated for medical reasons.</p>	

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<p>Option 2: Performance Requirement</p> <p>A performance requirement allows any combination of measures to achieve a specific endpoint.</p> <p>Action/Method of Requirement: General</p> <p>Objective/Outcome of Requirement: Specific</p>	<p>Allows employers the ability to utilize any combination of measures to achieve a specifically defined end requirement. Provides the flexibility to do whatever gets the (specified) job done. Because the end requirement is specifically defined, employers are clear on what the outcome of their efforts needs to be. Any compliance issues are also clear-cut due to the specifically defined end requirement.</p>	<p>Can be difficult to identify a specific end requirement that would be practical and appropriate for the range of employers and industries covered under the rule. Some employers would not have the resources to figure out effective and efficient means to achieve the specified end requirement.</p>	<ol style="list-style-type: none"> 1. From the OSHA 1995 <u>Proposed Ergonomics Regulation</u>: The employer shall control each problem job, and shall ensure such control is maintained, by implementing engineering controls and/or administrative controls. The employers obligation to implement controls in a (problem) job is completed where the employer demonstrates that the checklist score is 5 or less, or the equivalent. 2. From the <u>Danish Lifting Standard</u>: no lifting greater than 66 lbs. for lifts 12 inches from the body. 3. A good example of performance requirements from other WISHA safety and health standards is found in the well-known <u>general airborne permissible exposure limits</u> (PELs). Employers must ensure employees are not exposed above a specific airborne PEL for many chemicals, but the regulation allows the employer any combination of methods to achieve this specific level of control. 	<p>Where a performance-oriented requirement is contained in the rule, an employer would know they have complied with the rule when the specific endpoint is met. For example, in item #1 (at left), an employer would know they had complied with the requirement if problem jobs had a score of 5 or less using the checklist.</p>

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<p>Option 3: Best Practices</p> <p>Best practices provide examples of procedures and methods to follow in an effort to reduce injuries and illnesses.</p> <p>Action/Method of Requirement: Specific</p> <p>Objective/Outcome of Requirement: General</p>	<p>Best Practices can be developed that provide guidance, based on current industry knowledge, for methods that have been shown to reduce risks or injuries. Employers can rely on the guidance in the Best Practices rather than spending their own resources to develop ways to address risks or injuries.</p>	<p>No specific outcome of using the best practices is ensured. Difficult to identify best practices that would be applicable or appropriate for the range of employers and industries covered by the rule.</p>	<ol style="list-style-type: none"> 1. From the <u>Maine VDT regulation</u>: specific training required when two or more operators work at VDTs for more than four hours a day. 2. OSHA Meatpacking Guidelines: provides program guidelines and as well as specific procedures to reduce injuries in the meatpacking industry. 	<p>Where a requirement is addressed by best practices, an employer would know they have complied with the requirement when the actions or methods they used are consistent with the best practices. For example, in the case of the second example, an employer in the meatpacking industry would know they had complied with the requirement when their work activities and work methods were consistent with the meatpacking guidelines.</p>

Option/Description Requirement	Strengths	Limitations	Example	How will employers know when they have complied with the rule?
<p>Option 4: General Requirement</p> <p>This option requires some action or objective, but does not spell out specific details of carrying out the required action or detail a specific end point of an objective.</p> <p>Action/Method of Requirement: General</p> <p>Objective/Outcome of Requirement: General</p>	<p>Requires action to be taken to address a problem, but leaves interpretation of how to achieve this action up to the employer. The employer can use their best judgment and experience on the most appropriate way to carry out the required action.</p>	<p>Some employers would not have the resources to figure out efficient and effective means to carry out the required action. May result in employers "spinning their wheels" or experimenting a lot without necessarily achieving the desired result. Leaves a lot up to the interpretation of the employer – could be perceived as too vague or unclear about what the expectation of compliance would be. Also leaves a lot of interpretation up to each inspector in the case of compliance actions.</p>	<ol style="list-style-type: none"> 1. From the <u>California Ergonomics Regulation</u>: Each job, process, or operation covered by this section shall be evaluated for exposures, which have caused repetitive motion injuries. 2. From the <u>Great Britain Manual Handling Regulations</u>: Each employer shall take appropriate steps to reduce the risk of injury to those employees arising out of their undertaking any such manual handling operations to the lowest level reasonably practicable. 3. From the <u>Swedish Ergonomics Regulation</u>: The employer shall ensure that the employee has such opportunities of influencing the arrangement and performance of his own work that sufficient variation of movement and recuperation can be achieved. 	<p>Where a general requirement is contained in the rule, an employer would know when they have complied with the rule when their best judgment/good faith efforts to address the requirement are accomplished. For example, in the case of the first example, an employer would know they had complied with the requirement if in their best judgment/good faith they had evaluated each job, process, or operation for exposures that have caused repetitive motion injuries.</p>

Option/Description Requirement	Strengths	Limitations	Example	How will employers know when they have complied with the rule?
<p>Option 5: Combination of Options</p> <p>This option provides employers with the flexibility of choosing to meet a particular requirement by following specific details, or by following a performance, best practices, or general approach.</p> <p>Action/Method of Requirement: Specific or Performance or Best Practices or General</p> <p>Objective/Outcome of Requirement: Specific or Performance or Best Practices or General</p>	<p>Provides flexibility for employers to choose a specification requirement or a performance, best practices, or general requirement to comply with the rule. Also see "Strengths of the Option" for the specific, performance, best practices, and general requirements, respectively, above.</p>	<p>See the limitations listed for the options above, as applicable.</p>	<ol style="list-style-type: none"> 1. From the <u>OSHA 1995 Proposed Ergonomics Regulation</u>: Control of workplace risk factor exposures. The employer shall use a job improvement process which is effective in analyzing problem jobs, and in identifying, implementing and evaluating controls. Two options (performance and best practices as outlined in an appendix) are provided for employers to meet this requirement. 2. A good example of a combination of options from other WISHA safety and health rules is <u>the First Aid Standard (WAC 296-24-061)</u>. Employers must ensure that first-aid assistance is available in the workplace. Two options (performance and specification) are provided for employers to meet this requirement. 	<p>An employer would have options to comply with a requirement of the rule by following a specific requirement that has been detailed in the standard or by following a performance, best practices, or general requirement. For the first example given, an employer would know they have complied when either the methods provided in the Appendix, or different methods they may have or develop, are used to meet the requirement.</p> <p>Note: an alternate option could be provided directly in the rule or in a non-mandatory appendix that would be recognized as meeting the intent of the requirement.</p>

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